U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 02 204 50582 Office: VERMONT SERVICE CENTER Date: JAN 03 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides legal arbitration and mediation services. In order to employ the beneficiary as a legal assistant, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation. Particular aspects of the record noted in the decision included the facts that the petitioner did not attest that the bachelor's degree that it requires has to be in a specific field; that the degrees cited by the petitioner for the two legal assistants employed over the past five years were a law degree and a master's degree in public administration; and that the petitioner declined to provide documentation corroborating that the employees held these degrees.

Counsel submits no brief or additional evidence on appeal, but on the Form I-290B he asserts that, by stating the requirement for a law degree in its initial petition, the petitioner has established that "a baccalaureate degree in a specific field of 'Law' was required." Counsel also requests that the AAO take note of a 1994 decision of the administrative appeals unit (AAU), as the AAO was formerly known, which found a legal consultant position to be a specialty occupation.

The director was correct to deny the petition, as the petitioner did not satisfy any specialty occupation criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO based this determination upon its consideration of the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B with its statement of the appeal.

At the outset it should be noted that counsel's reference to the 1994 AAU decision is of no consequence. While 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding, *see* 8 C.F.R. § 103.2(b)(16)(ii), and the record presently before the AAO does not establish the proffered position as a specialty occupation. Furthermore, counsel has not articulated how the decision he cited on a "Legal Consultant" position has any bearing on consideration of the legal assistant position that is under consideration here.

This paragraph of the petitioner's January 7, 2003 letter of reply to the RFE is fairly representative of how the petitioner sees the proffered position:

> As you know, the legal profession is demanding. Law-related activities require discipline, a solid educational background, preferably in the law, and good judgment. In my office, which

> handles a high volume of labor and employment arbitration, the Legal Assistant must, among other activities, research and analyze the law (10% of the time); read and summarize authorities cited to me in support of the parties' positions (50% of the time); prepare high quality fact summaries and occasionally do first drafts of arbitration awards under my direction (30% of the time[])]. Additionally, I have need for the occasional preparation of affidavits and orders (10% of the time.) This person also must interface regularly with management and union personnel who use my services. Thus, he/she must have good skills in writing and communicating orally. The Legal Assistant must also have a good working knowledge of computers and various software programs employed in an arbitration and mediation practice. I cannot imagine a person lacking at least a BA or BS degree functioning competently in this arena.

The petitioner's comments and the nature of the evidence submitted in support of the petition suggest that the petitioner may have assumed that, to qualify as a specialty occupation, a position must merely require competencies or skills that can be acquired or enhanced by a variety of degrees that range beyond highly specialized knowledge in a specific specialty that is essential for performance of the job in question. As the following statutory and regulatory framework indicates, that assumption is erroneous.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184 (i)(l), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

> which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires *the attainment of a bachelor's degree or higher in a specific specialty*, or its equivalent, as a minimum for entry into the occupation in the United States. (Italics added.)

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

> *(1)* A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
>
> *(2)* The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
>
> *(3)* The employer normally requires a degree or its equivalent for the position; or
>
> *(4)* The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) has consistently interpreted the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(1)*, which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Consulting the 2004-2005 edition of the *Handbook,* the AAO found that the proffered position substantially comports with the paralegal and legal assistant occupation as described at pages 211-214, and that there the *Handbook* indicates that, for entry-level paralegal and legal assistant positions, employers do not normally require at least a bachelor's degree in a specific specialty. In fact, the *Handbook* reports that the most common educational credential for a paralegal job is an associate's degree from a community college paralegal program.

The record's vacancy announcements from other firms are consistent with the *Handbook's* information. While they indicate that some employers prefer a bachelor's degree, they do not indicate that even those employers normally require that the degree be in a specific specialty.

As no evidence in the record refutes the *Handbook's* information, the petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(1)* for positions for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty.

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The first alternative prong assigns specialty occupation status to a proffered position if it has a requirement for at least a bachelor's degree in a specific specialty, and that requirement is common to the industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As discussed above, the petitioner has not established that its proffered position is one for which for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Also, the record does not include any submissions from firms or individuals in the industry attesting that they routinely employ and recruit only persons with at least a bachelor's degree in a specific specialty. Finally, as already discussed, even the vacancy announcements from other firms that require a bachelor's degree for their paralegal or legal assistant positions do not limit those qualifying degrees to any specific specialty. Thus, these announcements are actually inconsistent with the proposition for which they were introduced, namely, that there is an industry-wide requirement for a degree in a specific specialty.

The petitioner also did not satisfy the *second* alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*). This criterion provides that, instead of proving a degree requirement that is common to the petitioner's industry, "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not establish that the proffered position is more complex than or unique from usual paralegal or legal assistant positions for which the *Handbook* reports no requirement for at least a bachelor's degree in a specific specialty. Counsel's reference to the petitioner's statement to the effect that its paralegal or legal assistant must have a "U.S. baccalaureate degree or its equivalent in law" is not persuasive. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Next, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

In light of the statutory and regulatory definitions of a specialty occupation, this criterion has several evidentiary elements. First, the petitioner must demonstrate that it has an established history of hiring for the proffered position only persons with at least a bachelor's degree or equivalent. Second, this bachelor's degree or equivalent must be in a specific specialty that is characterized by a body of highly specialized knowledge.

Third, the petitioner must also establish that both the nature and the level of highly specialized knowledge that the bachelor's degree or equivalent signifies are actually necessary for performance of the proffered position.

The petitioner has met none of these elements. As noted by the director, the petitioner has not substantiated the degrees that it asserted for two of its former paralegals. Aside from that material deficiency, the petitioner only cited the credentials of two persons over five years. The two distinctly different types of degrees cited for them – law and public administration – are not indicative of a body of highly specialized knowledge that needs to be theoretically and practically and applied to perform the proffered position. Furthermore, without more information about the firm's staffing levels, hiring practices, and turnover, such a limited hiring history for a firm in business since 1996 does not establish a history of the petitioner's normal recruiting and hiring practices for its paralegal staff. Moreover, the evidence of record does not demonstrate that performance of the position requires at least a bachelor's degree in a specific specialty.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*4*) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As described in the record, the proposed duties appear no more specialized and complex than those that should be expected in legal assistant positions for which the *Handbook* indicates a degree in a specific specialty is not normally required.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.